IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 11678 of 1999

Between:

1.B.Nagaiah, S/o.Balaiah

2.B.Shivaiah, S/o.Pochaiah

3.B.Narasimha, S/o.Pochaiah

(All are Residents of Lalgadi, Malakpet Village,

Shamirpet Mandal, Ranga Reddy District)

..... PETITIONERS

AND

1.The Government of Andhra Pradesh,

Represented by its Secretary,

Revenue (Assignment) Department,

Secretariat, Hyderabad.

2.The District Collector, Ranga Reddy District,

Hyderabad.

3.N.Kalavathi, W/o.Satyanarayana,

Lalgadi, Malakpet Village, Shamirpet Mandal

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to

issue a Writ of Mandamus declaring the orders of the 1st respondent in G.O.Ms.No.360 Revenue (Assighments.V) Department., dt.26.4.1999 as illegal, arbitrary and violative of the principles of natural justice and set aside the said order.

Counsel for the Petitioners:MR.J.VENKATESWARA REDDY

Counsel for the Respondents 1 and 2: GP FOR ASSIGNMENT

Counsel for the Respondent No.3:Sri G.PRATHAP REDDY (NOT PRESENT)

The Court made the following :

ORDER:

The three petitioners are brothers. They claim that they have been cultivating agricultural land in S.No.301 of Lalgadi, Malakpet Village for more than seven decades. It appears, the third respondent obtained a patta in respect of same land in 1991, though allegedly her husband, who is a retired railway employee is running a toddy shop in the village and also owns an extent of Ac.5.13 guntas in S.Nos.59, 62, 299, 472 and 764. Be that as it is, on 2.12.1997 third respondent appears to have made a representation for grant of regular patta and seeking appropriate directions to protect her possession. A report was called for by the District Collector. It appears, the Mandal Revenue Officer submitted a report to the effect that third respondent is not entitled for grant of any patta. Further, the Mandal Revenue Officer issued a show cause notice dt.19.12.1997 calling upon the third respondent as to why assignment made in her favour in respect of land in S.No.301 should not be cancelled. Aggrieved by the same, third respondent preferred a revision purportedly under Section 166-B of the A.P.(Telangana Area) Land Revenue Act, 1317 fasli (for short, the Act). The Government entertained the revision and by impugned G.O.Ms.No.360, dt.26.4.1999 set aside the show cause notice. Aggrieved by which, present Writ Petition is filed.

Learned counsel for the petitioner, Sri J.Venkateswara Reddy, raised only submission that under Section 166-B of the Act the Government has no power to entertain a revision petition against show cause notice. Though notice is served on third respondent, and is represented by learned counsel, none appears for third respondent. I have heard learned Assistant Government Pleader for Revenue

(Assignment), who does not dispute the contention.

Section 166-B of the Act reads as under:

166-B. Revision:- (1) Subject to the provisions of the Andhra Pradesh (Telangana Area) Board of Revenue Regulation, 1358F, the Government or any Revenue Officer not lower in rank to a Collector, the Settlement Commissioner of Land Records may call for the record of a case or proceedings from a subordinate department and inspect it in order to satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and may make suitable order in that behalf;

Provided that no order or decision affecting the rights of the ryots shall be modified or annulled unless the concerned parties are summoned and heard.

(2) Every Revenue Officer lower in rank to a Collector or Settlement Commissioner may call for the records of a case or proceedings from a subordinate department and satisfy himself that the order or decision passed or the proceedings taken is regular, legal and proper and if, in his opinion, any order or decision or, proceedings should be modified or annulled, he shall put up the file of the case with his opinion to the Collector or Settlement Commissioner as the case may be. Thereupon the Collector or Settlement Commissioner may pass suitable order under the provisions of sub-section (1).

(3) The original order or decision or an authentic copy of the original order or decision sought to be revised shall be filed along with every application for revision.

A plain reading of Section 166-B of the Act would show that it is competent for the Government or any Revenue Officer not below the rank of Collector to call for record of a case or proceeding from subordinate department for the purpose of inspecting order or decision passed or proceeding taken with reference to legality or propriety of the same. By the very language used in Section 166-B of the Act, revision power is conferred on the Government only to examine the record pertaining to an order or decision, and no revision would lie against show cause notice. Indeed, as held by the Supreme Court in **State of U.P. v. Shri Brahma Datta Sharma** when a show cause notice is issued, it cannot be said that an order is passed by any competent authority. It is only a notice in compliance with the principle of fairness calling upon a person likely to be affected to submit explanation. Initiation of proceedings, as required under law, cannot be termed as decision or order.

Therefore, the impugned order, purportedly passed under Section 166-B of the Act cannot be sustained. The impugned order is accordingly set aside. It shall, however, be open to third respondent to submit explanation to the Mandal Revenue Officer to the show cause notice dt.19.12.1997 whereupon it shall be open to the Mandal Revenue Officer to take appropriate action in the matter.

The Writ Petition is accordingly allowed. No costs.

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(V.V.S.RAO, J)

26.7.2004

bnr

The Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the day the Twenty Sixth day of July Two Thousand and Four

REGISTRAR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.The Secretary, Revenue (Assignment) Department,

Government of Andhra Pradesh, Secretariat, Hyderabad.

2.The District Collector, Ranga Reddy District,

Hyderabad.

3.2 CCs to GP for Revenue (Assignment),

High Court, Bldgs., Hyderabad (OUT)

4.2 CD copies.